

AMENDED IN SENATE JUNE 1, 2015  
AMENDED IN SENATE APRIL 23, 2015  
AMENDED IN SENATE MARCH 23, 2015

**SENATE BILL**

**No. 239**

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**Introduced by Senator Hertzberg**

February 17, 2015

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An act to amend Sections 56017.2 and 56133 of, and to add Section 56134 to, the Government Code, relating to local services.

LEGISLATIVE COUNSEL'S DIGEST

SB 239, as amended, Hertzberg. Local services: contracts: fire protection services.

Existing law prescribes generally the powers and duties of the local agency formation commission in each county with respect to the review approval or disapproval of proposals for changes of organization or reorganization of cities and special districts within that county. Existing law permits a city or district to provide extended services, as defined, outside its jurisdictional boundaries only if it first requests and receives written approval from the local agency formation commission in the affected county. Under existing law, the commission may authorize a city or district to provide new or extended services outside both its jurisdictional boundaries and its sphere of influence under specified circumstances.

This bill ~~would~~ *would, with certain exceptions*, permit a public agency to exercise new or extended services outside the public agency's current service area pursuant to a fire protection ~~reorganization~~ contract, as defined, only if the public agency receives written approval from the local agency formation commission in the affected county. The bill

would require that the legislative body of a public agency that is not a state agency adopt a resolution of application and submit the resolution along with a plan for services, as provided, and that a proposal by a state agency be initiated by the director of the agency with the approval of the ~~Governor~~. *Director of Finance*. The bill would require, prior to adopting the resolution or submitting the proposal, the public agency to enter into a written agreement for the performance of new or extended services pursuant to a fire protection-reorganization contract ~~with~~ *with, or provide written notice of a proposed fire protection contract to*, each affected public agency and recognized employee organization representing firefighters in the affected ~~area~~ *area*, and to conduct a public hearing on the resolution.

The bill would require the commission to approve or disapprove the proposal as specified. The bill would require the commission to consider, among other things, a comprehensive fiscal analysis prepared by the executive officer in accordance with specified requirements.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 56017.2 of the Government Code is
- 2 amended to read:
- 3 56017.2. "Application" means any of the following:
- 4 (a) A resolution of application or petition initiating a change of
- 5 organization or reorganization with supporting documentation as
- 6 required by the commission or executive officer.
- 7 (b) A request for a sphere of influence amendment or update
- 8 pursuant to Section 56425.
- 9 (c) A request by a city or district for commission approval of
- 10 an extension of services outside the agency's jurisdictional
- 11 boundaries pursuant to Section 56133 or 56134.

1 SEC. 2. Section 56133 of the Government Code is amended  
2 to read:

3 56133. (a) A city or district may provide new or extended  
4 services by contract or agreement outside its jurisdictional  
5 boundaries only if it first requests and receives written approval  
6 from the commission in the affected county.

7 (b) The commission may authorize a city or district to provide  
8 new or extended services outside its jurisdictional boundaries but  
9 within its sphere of influence in anticipation of a later change of  
10 organization.

11 (c) The commission may authorize a city or district to provide  
12 new or extended services outside its jurisdictional boundaries and  
13 outside its sphere of influence to respond to an existing or  
14 impending threat to the public health or safety of the residents of  
15 the affected territory if both of the following requirements are met:

16 (1) The entity applying for the contract approval has provided  
17 the commission with documentation of a threat to the health and  
18 safety of the public or the affected residents.

19 (2) The commission has notified any alternate service provider,  
20 including any water corporation as defined in Section 241 of the  
21 Public Utilities Code, or sewer system corporation as defined in  
22 Section 230.6 of the Public Utilities Code, that has filed a map and  
23 a statement of its service capabilities with the commission.

24 (d) The executive officer, within 30 days of receipt of a request  
25 for approval by a city or district of a contract to extend services  
26 outside its jurisdictional boundary, shall determine whether the  
27 request is complete and acceptable for filing or whether the request  
28 is incomplete. If a request is determined not to be complete, the  
29 executive officer shall immediately transmit that determination to  
30 the requester, specifying those parts of the request that are  
31 incomplete and the manner in which they can be made complete.  
32 When the request is deemed complete, the executive officer shall  
33 place the request on the agenda of the next commission meeting  
34 for which adequate notice can be given but not more than 90 days  
35 from the date that the request is deemed complete, unless the  
36 commission has delegated approval of those requests to the  
37 executive officer. The commission or executive officer shall  
38 approve, disapprove, or approve with conditions the contract for  
39 extended services. If the contract is disapproved or approved with

1 conditions, the applicant may request reconsideration, citing the  
2 reasons for reconsideration.

3 (e) This section does not apply to any of the following:

4 (1) Contracts or agreements solely involving two or more public  
5 agencies where the public service to be provided is an alternative  
6 to, or substitute for, public services already being provided by an  
7 existing public service provider and where the level of service to  
8 be provided is consistent with the level of service contemplated  
9 by the existing service provider.

10 (2) Contracts for the transfer of nonpotable or nontreated water.

11 (3) Contracts or agreements solely involving the provision of  
12 surplus water to agricultural lands and facilities, including, but not  
13 limited to, incidental residential structures, for projects that serve  
14 conservation purposes or that directly support agricultural  
15 industries. However, prior to extending surplus water service to  
16 any project that will support or induce development, the city or  
17 district shall first request and receive written approval from the  
18 commission in the affected county.

19 (4) An extended service that a city or district was providing on  
20 or before January 1, 2001.

21 (5) A local publicly owned electric utility, as defined by Section  
22 9604 of the Public Utilities Code, providing electric services that  
23 do not involve the acquisition, construction, or installation of  
24 electric distribution facilities by the local publicly owned electric  
25 utility, outside of the utility's jurisdictional boundaries.

26 (6) A fire protection–~~reorganization~~ contract, as defined in  
27 subdivision (a) of Section 56134.

28 SEC. 3. Section 56134 is added to the Government Code, to  
29 read:

30 56134. (a) (1) For the purposes of this section, “fire protection  
31 ~~reorganization~~ contract” means a contract or agreement for the  
32 exercise of new or extended fire protection services outside a public  
33 agency's current service area, as authorized by Chapter 4  
34 (commencing with Section 55600) of Part 2 of Division 2 of Title  
35 5 of this code or by Article 4 (commencing with Section 4141) of  
36 Chapter 1 of Part 2 of Division 4 of the Public Resources Code,  
37 that does either of the following:

38 (A) Transfers responsibility for providing services in more than  
39 25 percent of the service area of any public agency affected by the  
40 contract or agreement.

(B) Changes the employment status of more than 25 percent of the employees of any public agency affected by the contract or agreement.

(2) A contract or agreement for the exercise of new or extended fire protection services outside a public agency's current service area, as authorized by Chapter 4 (commencing with Section 55600) of Part 2 of Division 2 of Title 5 of this code or Article 4 (commencing with Section 4141) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, that, in combination with other contracts or agreements, would produce the results described in subparagraph (A) or (B) of paragraph (1), shall be deemed a fire protection ~~reorganization~~ contract for the purposes of this section.

(b) Notwithstanding Section 56133, a public agency may provide new or extended services pursuant to a fire protection ~~reorganization~~ contract only if it first requests and receives written approval from the commission in the affected county pursuant to the requirements of this section.

(c) A request by a public agency for commission approval of *new or extended* services provided ~~under~~ pursuant to a fire protection ~~reorganization~~ contract shall be made by the adoption of a resolution of application as follows:

(1) In the case of a public agency that is not a state agency, the application shall be initiated by the adoption of a resolution of application by the legislative body of the public agency proposing to provide new or extended services outside the public agency's current service area.

(2) In the case of a public agency that is a state agency, the application shall be initiated by the director of the state agency proposing to provide new or extended services outside the agency's current service area and be approved by the ~~Governor~~. *Director of Finance*.

(d) The legislative body of a public agency or the director of a state agency shall not submit a resolution of application pursuant to this section unless both of the following occur:

(1) The public agency ~~obtains~~ *does either of the following*:

(A) *Obtains* and submits with the resolution a written agreement validated and executed by each affected public agency and recognized employee organization that represents firefighters of the existing and proposed service providers consenting to the proposed ~~change of organization~~. *fire protection contract*.

1     (B) Provides, at least 30 days prior to the hearing held pursuant  
2 to paragraph (2), written notice to each affected public agency  
3 and recognized employee organization that represents firefighters  
4 of the existing and proposed service providers of the proposed fire  
5 protection contract and submits a copy of each written notice with  
6 the resolution of application. The notice shall, at minimum, include  
7 a full copy of the proposed contract.

8     (2) The public agency conducts an open and public hearing on  
9 the resolution, conducted pursuant to the Ralph M. Brown Act  
10 (Chapter 9 (commencing with Section 54950) of Part 1 of Division  
11 2 of Title 5) or the Bagley-Keene Open Meeting Act (Article 9  
12 (commencing with Section 11120) of Chapter 1 of Part 1 of  
13 Division 3 of Title 2), as applicable.

14     (e) A resolution of application submitted pursuant to this section  
15 ~~must shall~~ be submitted with a ~~fire services reorganization contract~~  
16 ~~plan that conforms to the requirements of Section 56653.~~ The plan  
17 which shall include all of the following information:

18     (1) The total estimated cost to provide the new or extended fire  
19 protection services in the affected territory.

20     (2) The estimated cost of the new or extended fire protection  
21 services to customers in the affected territory.

22     (3) An identification of existing service providers, if any, of the  
23 new or extended services proposed to be provided and the potential  
24 fiscal impact to the customers of those existing providers.

25     (4) A plan for financing the exercise of the new or extended fire  
26 protection services in the affected territory.

27     (5) Alternatives for the exercise of the new or extended fire  
28 protection services in the affected territory.

29     (6) *An enumeration and description of the new or extended fire*  
30 *protection services proposed to be extended to the affected*  
31 *territory.*

32     (7) *The level and range of new or extended fire protection*  
33 *services.*

34     (8) *An indication of when the new or extended fire protection*  
35 *services can feasibly be extended to the affected territory.*

36     (9) *An indication of any improvements or upgrades to structures,*  
37 *roads, sewer or water facilities, or other conditions the public*  
38 *agency would impose or require within the affected territory if the*  
39 *fire protection contract is completed.*

1 (f) The applicant shall cause to be prepared by contract an  
2 independent comprehensive fiscal analysis to be submitted with  
3 the application pursuant to this section. The analysis shall review  
4 and ~~document~~: *document all of the following*:

5 (1) The costs to the public agency that has proposed to provide  
6 new or extended fire protection services during the three fiscal  
7 years following a public agency entering into a fire protection  
8 ~~reorganization~~ contract, in accordance with the following  
9 requirements:

10 (A) The analysis ~~must~~ *shall* include all direct and indirect cost  
11 impacts to the existing service provider in the affected territory.

12 (B) The analysis ~~must~~ *shall* review how the costs of the existing  
13 service provider compare to the costs of services provided in  
14 service areas with similar populations and of similar geographic  
15 size that provide a similar level and range of services and ~~shall~~  
16 make a reasonable determination of the costs expected to be borne  
17 by the public agency providing new or extended fire protection  
18 services.

19 (2) The revenues of the public agency that has proposed a new  
20 or extended fire protection services outside its current service area  
21 during the three fiscal years following the effective date of a  
22 contract or agreement with another public agency to provide a new  
23 or extended service.

24 (3) The effects on the costs and revenues of any affected public  
25 agency, including the public agency proposing to provide the new  
26 or extended fire protection services, during the three fiscal years  
27 that the new or extended fire protection services will be provided.

28 (4) Any other information and analysis needed to support the  
29 findings required by subdivision (j).

30 (g) The clerk of the legislative body of a public agency or the  
31 director of a state agency adopting a resolution of application  
32 pursuant to this section shall file a certified copy of the resolution  
33 with the executive officer.

34 (h) (1) The executive officer, within 30 days of receipt of a  
35 public agency's request for approval of a fire protection  
36 ~~reorganization~~ contract, shall determine whether the request is  
37 complete and acceptable for filing or whether the request is  
38 incomplete. If a request does not comply with the requirements of  
39 subdivision (d), the executive officer shall determine that the  
40 request is incomplete. If a request is determined ~~not to be complete~~,

1 *incomplete*, the executive officer shall immediately transmit that  
2 determination to the requester, specifying those parts of the request  
3 that are incomplete and the manner in which they can be made  
4 complete. When the request is deemed complete, the executive  
5 officer shall place the request on the agenda of the next commission  
6 meeting for which adequate notice can be given but not more than  
7 90 days from the date that the request is deemed complete.

8 (2) The commission shall approve, disapprove, or approve with  
9 conditions the contract for *new or* extended services following the  
10 hearing at the commission meeting, as provided in paragraph (1).  
11 If the contract is disapproved or approved with conditions, the  
12 applicant may request reconsideration, citing the reasons for  
13 reconsideration.

14 (i) (1) The commission shall not approve an application for  
15 approval of a fire protection-reorganization contract unless the  
16 commission determines that the public agency will have sufficient  
17 revenues to carry out the exercise of the new or extended fire  
18 protection services outside its current area, except as specified in  
19 paragraph (2).

20 (2) The commission may approve an application for approval  
21 of a fire protection-reorganization contract where the commission  
22 has determined that the public agency will not have sufficient  
23 revenue to provide the proposed new or different functions or class  
24 of services, if the commission conditions its approval on the  
25 concurrent approval of sufficient revenue sources pursuant to  
26 Section 56886. In approving a proposal, the commission shall  
27 provide that, if the revenue sources pursuant to Section 56886 are  
28 not approved, the authority of the public agency to provide new  
29 or extended fire protection services shall not be exercised.

30 (j) The commission shall not approve an application for approval  
31 of a fire protection-reorganization contract unless the commission  
32 finds, based on the entire record, all of the following:

33 (1) The proposed exercise of new or extended fire protection  
34 services outside a public agency's current service area is consistent  
35 with the intent of this division, including, but not limited to, the  
36 policies of Sections 56001 and 56300.

37 (2) The commission has reviewed the comprehensive fiscal  
38 analysis prepared pursuant to subdivision (f).

39 (3) The commission has reviewed any testimony presented at  
40 the public hearing.



(4) The proposed affected territory is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following the effective date of the contract or agreement between the public agencies to provide ~~a~~ *the* new or extended fire protection services.

(k) At least 21 days prior to the date of the hearing, the executive officer shall give mailed notice of that hearing to each affected local agency or affected county, and to any interested party who has filed a written request for notice with the executive officer. In addition, at least 21 days prior to the date of that hearing, the executive officer shall cause notice of the hearing to be published in accordance with Section 56153 in a newspaper of general circulation that is circulated within the territory affected by the proposal proposed to be adopted and shall post the notice of the hearing on the commission's Internet Web site.

(l) The commission may continue from time to time any hearing called pursuant to this section. The commission shall hear and consider oral or written testimony presented by any affected local agency, affected county, or any interested person who appears at any hearing called and held pursuant to this section.

(m) *This section shall not be construed to abrogate a public agency's obligations under the Meyers-Millias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1).*

~~SEC. 4.~~ *The Legislature finds and declares that, with respect to fire protection contracts subject to this act, the provisions of this act are not intended to change, alter, or in any way affect the existing jurisdiction of a local agency formation commission over proceedings that involve the provision of prehospita emergency medical services.*

~~SEC. 4.~~

SEC. 5. The Legislature finds and declares that Section 3 of this act, which adds Section 56134 to the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

- 1 This act provides for notice to the public in accordance with
- 2 existing provisions of the Cortese-Knox-Hertzberg Local
- 3 Government Reorganization Act of 2000 and will ensure that the
- 4 right of public access to local agency meetings is protected.

O